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9 Attorneys for Complainant

10 **BEFORE THE**  
11 **CALIFORNIA BOARD OF ACCOUNTANCY**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. AC-2005-14 (Palbaum)

15 KPMG Peat Marwick, LLP  
16 725 South Figueroa Street  
17 Los Angeles, CA 90017  
18 CPA Partnership Certificate No. PAR 157

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER  
BRYAN E. PALBAUM, CPA 51655**

19 **Bryan E. Palbaum**  
20 **800 South Shamrock Avenue**  
21 **Monrovia, CA 91016**  
22 **Certified Public Accountant**  
23 **Certificate No. CPA 51655**

24 John Ming Wong  
25 6252 Forester Drive  
26 Huntington Beach, CA 92648  
27 Certified Public Accountant  
28 Certificate No. CPA 45405

Kenneth B. Janeski  
355 So. Grand Avenue  
Los Angeles, CA 90071  
Certified Public Accountant  
Certificate No. CPA 20116

David Akio Hori  
400 E. Van Buren Street  
Phoenix, AZ 85004  
Certified Public Accountant  
Certificate No. CPA 68236

Roland William ("Bill") Carroll, Jr.  
540 San Geronio Street  
San Diego, CA 92106  
Certified Public Accountant  
Certificate No. CPA 14338, Respondents.

In the interest of a prompt settlement of this matter, consistent with the public interest and

1 the responsibilities of the California Board of Accountancy of the Department of Consumer  
2 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order  
3 which will be submitted to the Board for approval and adoption as the final disposition of the  
4 Accusation filed herein as it relates to Respondent Bryan E. Palbaum (Case No. 2005-14).

5 **PARTIES AND JURISDICTION**

6 1. Carol Sigmann, Complainant, is the Executive Officer of the California Board of  
7 Accountancy (the "Board"). She brought this action solely in her official capacity and is  
8 represented in this matter by Bill Lockyer, Attorney General of the State of California, and by  
9 Jeanne C. Werner, Deputy Attorney General.

10 2. On or about November 18, 1988, the Board issued Certified Public Accountant  
11 Certificate No. CPA 51655 to Bryan Edward Palbaum ("Respondent Palbaum"). The certificate  
12 is renewed through February 28, 2007, and has not been the subject of prior Board discipline.  
13 Respondent Palbaum is represented in this proceeding by attorney Gary F. Bendinger of  
14 Bendinger, Crockett, Peterson & Casey, PC, Salt Lake City, Utah.

15 3. The term "Accusation" refers to the Accusation on file in Board case Nos. AC-  
16 2005-13 through AC-2005-17 and AC-2005-20, but as used herein refers only to the charges  
17 against Respondent Palbaum. Similarly, the Stipulated Settlement addresses all charges and  
18 matters in the Accusation as they relate to Respondent Palbaum, and does not purport to deal  
19 with other respondents. This Stipulation bears Board Case No. 2005-14.

20 4. The Accusation was filed before the California Board of Accountancy,  
21 Department of Consumer Affairs, and Case No. AC-2005-14 is currently pending against  
22 Respondent Palbaum. The Accusation and all other statutorily required documents were properly  
23 served on Respondent Palbaum and Respondent timely filed his Notice of Defense contesting the  
24 Accusation. A copy of the Accusation is attached as Exhibit A and incorporated herein by  
25 reference. The parties stipulate that the Board has jurisdiction in this matter

26 **WAIVERS & CONTINGENCY**

27 5. Respondent Palbaum has carefully read, fully discussed with counsel, and  
28 understands the charges and allegations in the Accusation, as they apply to him, in Case No.

1 AC-2005-14. Respondent has also carefully read, fully discussed with counsel, and understands  
2 the effects of this Stipulated Settlement and Disciplinary Order.

3 6. Respondent is fully aware of his legal rights in this matter, including the right to a  
4 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
5 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
6 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to  
7 compel the attendance of witnesses and the production of documents; the right to reconsideration  
8 and court review of an adverse decision; and all other rights accorded by the California  
9 Administrative Procedure Act and other applicable laws. Respondent voluntarily, knowingly,  
10 and intelligently waives and gives up each and every right set forth above.

11 7. It is understood that in signing this stipulation rather than further contesting the  
12 Accusation, Respondent Palbaum is voluntarily consenting to the adoption of this Stipulated  
13 Settlement as the Board's Decision in Case No. 2005-14, enabling the Board of Accountancy of  
14 the State of California to issue the following order without further legal process. Respondent  
15 Palbaum represents that no tender, offer, promise, threat or inducement of any kind whatsoever  
16 have been made by the Board or any member, officer, agent or representative thereof in  
17 consideration of this offer or otherwise to induce him to so consent.

18 8. This stipulation shall be subject to approval by the Board. Respondent Palbaum  
19 understands and agrees that counsel for Complainant, her counsel and the staff of the Board may  
20 communicate directly with the Board regarding this stipulation and settlement, without notice to  
21 or participation by Respondent or his counsel. By signing the stipulation, Respondent  
22 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation  
23 prior to the time the Board considers and acts upon it.

24 9. If the Board does not adopt this stipulation as its Decision and Order, the  
25 Stipulated Settlement shall be withdrawn. It shall be of no force or effect, except for this  
26 paragraph. It shall have no evidentiary value, shall be inadmissible in any legal action between  
27 the parties, and shall not be relied upon or introduced in any disciplinary, or other, action or  
28 proceeding by either party hereto. In the event that the Stipulated Settlement is not adopted,

1 nothing recited herein shall be construed as a waiver of Respondent's right to a hearing on the  
2 truth of the Accusation's charges, or a waiver of any other right, including those rights expressly  
3 waived in the Stipulated Settlement. Communications pursuant to this paragraph, and  
4 consideration of this matter, shall not disqualify the Board or other persons from future  
5 participation in this or any other matter affecting Respondent. Respondent agrees that should the  
6 Board reject this Stipulated Settlement and if this case proceeds to hearing, Respondent will  
7 assert no claim that the Board was prejudiced by its review and discussion of the Stipulated  
8 Settlement or of any records related hereto. In the event that the Stipulated Settlement is not  
9 adopted, Respondent is not precluded from filing a Special Notice of Defense within fifteen days  
10 of his counsel being notified in writing that the Stipulated Settlement was not adopted.

11 **ADMISSIONS AND FURTHER STIPULATIONS BETWEEN THE PARTIES**

12 10. The parties acknowledge that the basis for the Accusation's alleged violations of  
13 California Business and Professions Code<sup>1</sup> Section 5100, subparagraphs (h) and (i) is the  
14 decision and Order entered by the United States Securities and Exchange Commission ("SEC" or  
15 "Commission") on October 20, 2004, in its case *In the Matter of KPMG LLP, Bryan E. Palbaum,*  
16 *CPA, John M. Wong, CPA, Kenneth B. Janeski, CPA, David A. Hori, CPA, Respondent*  
17 *(Administrative Proceeding File No. 3-11714)(see paragraph 22 of the Accusation).*<sup>2</sup>  
18 Respondent herein, Bryan E. Palbaum, without admitting or denying the findings in the SEC  
19 Order, except as to the Commission's jurisdiction over him and the subject matter of the  
20 Commission's proceedings, consented, effective October 20, 2004, to the entry of an *Order*  
21 *Instituting Public Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules*  
22 *of Practice, Making Findings, and Imposing Remedial Sanctions* ("Order").

23 11. Respondent Palbaum admits the matters alleged in paragraphs 18, 22, and 37, and  
24 that the SEC's Order described above and in the Accusation, provides the basis for violations of  
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26 1. The California Business and Professions Code is referred to hereinafter as the "Code."

27 2. The Order is also filed as "Securities Exchange Act of 1934 Release No. 50564 /  
28 October 20, 2004" and "Accounting And Auditing Enforcement Release No. 2125 / October 20,  
2004."

1 Code Section 5100, subparagraphs (h) and (I), as alleged in paragraphs 41 and 43 of the  
2 Accusation, as they pertain to him.

3 12. Respondent Palbaum agrees that his CPA Certificate is subject to discipline under  
4 Code Sections 5100(h) and 5100(I) as set forth in the Accusation, and agrees to be bound by the  
5 Board's imposition of discipline as set forth in the disciplinary order below. Respondent further  
6 agrees not to take any action or make any public statement that creates, or tends to create, the  
7 impression that any of the matters set forth in the Stipulated Settlement, Order and Decision are  
8 without a factual basis. It is not the intent of the board, however, to prevent Respondent from  
9 testifying or responding truthfully in civil litigation or regulatory matters, including where he is  
10 required to do so by any court of law or regulatory body.

11 13. The parties understand and agree that facsimile copies of this Stipulated  
12 Settlement, including facsimile signatures thereto, shall have the same force and effect as the  
13 originals.

14 14. The Board, in accepting this stipulation, is foregoing its right to institute further  
15 disciplinary proceedings, including filing charges in addition to the charges contained in the  
16 Accusation, against Respondent's license based upon conduct arising out of the audits and  
17 reviews of the financial statements of Gemstar for the period covered in the Accusation.  
18 However, in the event that Case Nos. AC-2005-13 through AC-2005-17, and AC-2005-20, are  
19 not resolved effective April 1, 2005, the Board reserves the right to initiate or continue  
20 investigations and administrative proceedings related to the conduct of Board licensees who may  
21 have been involved in the acts or omissions underlying the SEC's allegations and Order as well  
22 as any other violations of the Accountancy Act which may have occurred by Board licensee(s) in  
23 the Gemstar engagements. In those circumstances, Respondent voluntarily agrees to fully  
24 cooperate with, and, upon reasonable notice, make himself available to, the Board and its  
25 designees, without the necessity of a subpoena, in any investigation of other Board licensees  
26 regarding the Gemstar engagements, including, but not limited to, the providing of interviews,  
27 statements, affidavits, declarations, and any other documents or other types of information  
28 requested, consistent with the requirements of confidentiality and law. Respondent, if called to

1 do so, shall cooperate with the Board and shall, upon reasonable notice, testify at any subsequent  
2 administrative or civil proceeding if asked to do so by the Board. Finally, this provision shall not  
3 have the effect of limiting in any way the Board's monitoring of Respondent's compliance with  
4 the terms of this order.

5 **IN CONSIDERATION OF THE FOREGOING** admissions and stipulations, the  
6 parties agree that the Board may, without further notice or formal proceeding, issue and enter the  
7 following Disciplinary Order:

8 **DISCIPLINARY ORDER**

9 IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. CPA 51655  
10 to Respondent Bryan E. Palbaum is revoked. However, the revocation is stayed and Respondent  
11 is placed on probation for three (3) years on the following terms and conditions.

12 1. **Actual Suspension.** Certified Public Accountant Certificate No. CPA 51655  
13 issued to Bryan E. Palbaum is suspended for one hundred eighty (180) days. During the period  
14 of suspension, Respondent shall engage in no activities for which certification as a Certified  
15 Public Accountant or Public Accountant is required as described in Business and Professions  
16 Code, Division 3, Chapter 1, Section 5051.

17 2. **Obey All Laws.** Respondent shall obey all federal, California, other  
18 states' and local laws, including those rules relating to the practice of public accountancy in  
19 California.

20 3. **Submit Written Reports.** Respondent shall submit, within ten (10) days  
21 of completion of the quarter, written reports to the Board on a form obtained from the Board.  
22 The Respondent shall submit, under penalty of perjury, such other written reports, declarations,  
23 and verification of actions as are required. These reports, declarations, and/or verifications shall  
24 contain statements relative to Respondent's compliance with all the terms and conditions of  
25 probation. Respondent shall immediately execute all release of information forms as may be  
26 required by the Board or its representatives to confirm Respondent's compliance with the terms  
27 and conditions of probation.

28 4. **Personal Appearances.** Respondent shall, during the period of probation,

1 appear in person at interviews/meetings as directed by the Board or its designated  
2 representatives, provided such notification is accomplished in a timely manner.

3       5.       **Comply With Probation.** Respondent shall fully comply with the terms and  
4 conditions of the probation imposed by the Board and shall cooperate fully with representatives  
5 of the Board of Accountancy in its monitoring and investigation of the Respondent's compliance  
6 with probation terms and conditions.

7       6.       **Cooperate with Board.** Respondent will cooperate with Board investigations as  
8 provided in paragraph 14 above.

9       7.       **Practice Investigation.** Respondent shall be subject to, and shall permit,  
10 practice investigation of the Respondent's professional practice. Such a practice investigation  
11 shall be conducted by representatives of the Board, provided notification of such review is  
12 accomplished in a timely manner. However, Respondent acknowledges that the Board may  
13 confirm, without notice to Respondent, that Respondent is in compliance with Business and  
14 Professions Code Section 5051 during the suspension period.

15       8.       **Comply With Citations.** Respondent shall comply with all final orders resulting  
16 from citations issued by the Board of Accountancy.

17       9.       **Tolling of Probation For Out-of-State Residence/Practice.** In the event  
18 Respondent should leave California to reside or practice public accountancy outside this state,  
19 Respondent must notify the Board in writing of the dates of departure and return. Periods of  
20 non-California residency or practicing public accountancy outside the state shall not apply to  
21 reduction of the probationary period, or of any suspension. No obligation imposed herein,  
22 including requirements to file written reports, reimburse the Board costs, or make restitution to  
23 consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or  
24 practice except at the written direction of the Board.

25       10.      **Active License Status.** Respondent shall at all times maintain an active license  
26 status with the Board, including during any period of suspension. If the license is expired at the  
27 time the Board's decision becomes effective, the license must be renewed within 30 days of the  
28 effective date of the decision.

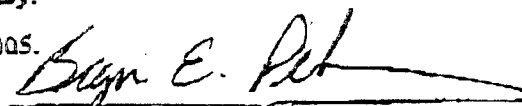
1 11. Violation of Probation. If Respondent violates probation in any respect, the  
2 Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and  
3 carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation  
4 is filed against Respondent during probation, the Board shall have continuing jurisdiction until  
5 the matter is final and the period of probation shall be extended until the matter is final.

6 12. Completion of Probation. Upon successful completion of probation,  
7 Respondent's license will be fully restored.

8  
9 **ACCEPTANCE**

10 I have carefully read the above Stipulated Settlement and Disciplinary Order and have  
11 fully discussed it with my attorney, Gary F. Bendinger. I understand the stipulation and the  
12 effect it will have on my CPA Certificate. I enter into this Stipulated Settlement and Disciplinary  
13 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order  
14 of the California Board of Accountancy.

15 DATED: March 9, 2005.

16   
17 **BRYAN E. PALBAUM**  
18 Respondent

19 I have read and fully discussed with Respondent Bryan E. Palbaum the terms and  
20 conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
21 Order. I approve its form and content.

22 DATED: March 9, 2005.

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25 **GARY F. BENDINGER**  
26 Bendinger, Crockett, Peterson & Casey, PC  
27 Attorney for Respondent  
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**ENDORSEMENT**

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

DATED: March 10, 2005.

BILL LOCKYER, Attorney General  
of the State of California

*Jeanne C. Werner*  
JEANNE C. WERNER  
Deputy Attorney General

Attorneys for Complainant

*Jaw*

**BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2005-14 (Palbaum)

KPMG LLP  
CPA Partnership Certificate No. PAR 157

**Bryan E. Palbaum**  
**CPA Certificate No. CPA 51655**

John Ming Wong  
CPA Certificate No. CPA 45405

Kenneth B. Janeski  
CPA Certificate No. CPA 20116

David Akio Hori  
CPA Certificate No. CPA 68236

Roland William ("Bill") Carroll, Jr.  
CPA Certificate No. CPA 14338,

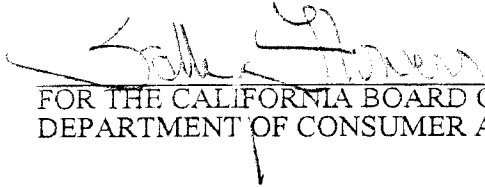
Respondents.

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 1, 2005.

It is so ORDERED on March 25, 2005.

  
FOR THE CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS